IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9075 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IBRAHIM ABDUL REHMAN SHAIKH

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

Mr.Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/12/2000

ORAL JUDGEMENT

#. The petitioner herein by way of this petition under Article 226 of the Constitution of India has challenged his order of detention dated 3.8.2000 passed by the Police Commissioner, Ahmedabad City, Ahmedabad in

exercise of the powers conferred upon him under section 3(1) of the Gujarat Prevention of Anti-social Activities Act 1985 (PASA Act for short). The petitioner came to be detained in pursuance of the above said order on 4.8.2000.

#. The grounds served upon the petitioner reveal that the detaining authority has placed reliance on investigation in the crimes registered against the petitioner under sections 66-B,65-A-E, 81, 83 and 116-B of the Bombay Prohibition Act on 31.7.2000. The detaining authority also considered the statements of 2 witnesses who offered their statements against the petitioner about his illegal and anti-social activity on assurance of anonymity before the concerned police officer. From the above material, the detaining authority concluded that the petitioner was a bootlegger within the meaning of section 2(b) of the PASA Act. The detaining authority also concluded that the petitioner was indulging in selling and dealing in illegal liquor which caused harm to the public health. The detaining authority further concluded that the petitioner was a hardened criminal and a head strong person and was an obstruction to public peace and order. Therefore, the order under the PASA Act detaining the petitioner came to be passed.

#. Learned advocate Ms. Suman Pahwa on behalf of Thakar Associates for the petitioner and learned AGP Mr. Uday Bhatt for the respondents were heard.

#. From the rival contentions and scrutinising the record, it clearly appears that the order of detention is vitiated by non application of kind by the detaining authority. Non application of mind of the detaining authority emerges from the aspect that the detaining authority failed to consider that in crime registered against the petitioner and relied upon by the detaining authority the petitioner was in judicial custody and he had no opportunity to prefer any bail application. It is urged that till today the petitioner has not preferred any bail application in the above said crime registered against the petitioner. Since the petitioner was in judicial custody at the time of service of the order the question, the petitioner indulging in any illegal activity did not arise. Non application of mind on the part of the detaining authority reveals from this factual aspect. Secondly the detaining authority in the grounds of detention anticipated that the petitioner was likely to prefer bail application and was likely to be released on bail by the competent court. The detaining authority

anticipated further that on so releasing, the petitioner was likely to continue his illegal and anti-social activity. The detaining authority in this respect further considered that the remedy of cancellation of bail was of no avail because the same was likely to take time. Non application of mind by the detaining authority qua legal position is revealed by these observations in the grounds by the detaining authority. In fact there was no material before the detaining authority to anticipate that the petitioner was likely to continue his illegal activity. Further the detaining authority had an opportunity to oppose the bail application on the very ground, if at all preferred by the petitioner. Instead of resorting to less drastic remedy this aspect was brushed aside by the detaining authority by merely saying that the petitioner was likely to be released on bail and was likely to continue his illegal activity. The detaining authority went on further to say that the procedure for cancellation of bail was likely to consume more time. This is clearly non application of mind on the part of the detaining authority, vitiating the order of detention. For the above stated reasons the order of detention is required to be set aside.

#. In view of the above discussion the detention order passed against the petitioner by the Police Commissioner, Ahmedabad City, Ahmedabad on 3.8.2000 under the PASA Act is hereby ordered to be quashed and set aside. The petitioner-Ibrahim Abdul Rehman Shaikh is ordered to be released forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R.Vora.J)

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